

UNITED STATES DISTRICT COURT
for the
Southern District of West Virginia



DALLAS BEARD)

Petitioner)

v.)

WARDEN, FCI McDowell)

Respondent)

(name of warden or authorized person having custody of petitioner)

Case No. 1:22-cv-00407*(Supplied by Clerk of Court)***PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241****Personal Information**

1. (a) Your full name: Dallas Beard
(b) Other names you have used: N/A
2. Place of confinement:
 - (a) Name of institution: FCI McDowell
 - (b) Address: P.O. Box 1009
Welch, West Virginia 24801
 - (c) Your identification number: Reg. No. 11163-028
3. Are you currently being held on orders by:

Federal authorities State authorities Other - explain: _____
4. Are you currently:

A pretrial detainee (waiting for trial on criminal charges)
 Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime

If you are currently serving a sentence, provide:

 - (a) Name and location of court that sentenced you: Southern District of Indiana (Indianapolis)
 - (b) Docket number of criminal case: 1:12-cr-00212-TWP-TAB-1
 - (c) Date of sentencing: 06/27/2014

Being held on an immigration charge
 Other (explain): N/A

Decision or Action You Are Challenging

5. What are you challenging in this petition:

How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

Pretrial detention

Immigration detention

Detainer

The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)

Disciplinary proceedings

Other (explain): _____

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: Southern District of Indiana (Indianapolis)

(b) Docket number, case number, or opinion number: _____

(c) Decision or action you are challenging (*for disciplinary proceedings, specify the penalties imposed*):

ACCA Enhancement.

(d) Date of the decision or action: _____

Your Earlier Challenges of the Decision or Action7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

 Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: United States Court of Appeals Seventh Circuit(2) Date of filing: 07/07/2014(3) Docket number, case number, or opinion number: 1:12-cr-00212-TWP-TAB-1, Doc. 263(4) Result: Dismissed(5) Date of result: 11/12/2014(6) Issues raised: Sentences and convictions

(b) If you answered "No," explain why you did not appeal: N/A

8.

Second appeal

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: _____

9.

Third appeal

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a third appeal: _____

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

Yes No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

Yes No

If "Yes," provide:

(1) Name of court: Southern District of Indiana (Indianapolis)

(2) Case number: 1:12-cr-00212-TWP-TAB-1

(3) Date of filing: 05/19/2017

(4) Result: Denied

(5) Date of result: 08/15/2017

(6) Issues raised: Sentences and convictions

Beard filed a § 2255 Motion, challenging his guilty plea as involuntary because he was not aware that he was not aware that he could not be sentenced as a career offender.

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

Yes No

If "Yes," provide:

(1) Name of court:

(2) Case number:

(3) Date of filing:

(4) Result:

(5) Date of result:

(6) Issues raised:

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: _____

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

Yes No

If "Yes," provide:

(a) Date you were taken into immigration custody: _____

(b) Date of the removal or reinstatement order: _____

(c) Did you file an appeal with the Board of Immigration Appeals?

Yes No

If "Yes," provide:

(1) Date of filing: _____

(2) Case number: _____

(3) Result: _____

(4) Date of result: _____

(5) Issues raised: _____

(d) Did you appeal the decision to the United States Court of Appeals?

Yes No

If "Yes," provide:

(1) Name of court: _____

(2) Date of filing: _____

(3) Case number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

Yes No

If "Yes," provide:

(a) Kind of petition, motion, or application: _____
(b) Name of the authority, agency, or court: _____

(c) Date of filing: _____
(d) Docket number, case number, or opinion number: _____
(e) Result: _____
(f) Date of result: _____
(g) Issues raised: _____

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Beard's prior conviction for multiple counts of burglary do not qualify him as an ACCA offender requiring resentencing without the ACCA enhancement.

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

Please see Memorandum of Law in Support.

(b) Did you present Ground One in all appeals that were available to you?

Yes No

GROUND TWO: _____

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

(b) Did you present Ground Two in all appeals that were available to you?

Yes No

GROUND THREE: _____

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

(b) Did you present Ground Three in all appeals that were available to you?

Yes No

GROUND FOUR:

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

(b) Did you present Ground Four in all appeals that were available to you?

Yes No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do: Beard' sentence must be vacated for resentencing without the ACCA enhancement and with the application of 782 Amendment. In the alternative, an evidentiary hearing should be held so that Beard may further prove his meritorious ground for relief, resolve any disputed facts, and expand an incomplete record.

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: _____

Signature of Petitioner

N/A

Signature of Attorney or other authorized person, if any

Dallas Beard
 Reg. No. 11163028
 Federal Corr. Institution
 P.O. Box 1009
 Welch, WV, 24801



Mr. Rory L. Perry III
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